

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION SIX**

SAM LEVIN, INC. d/b/a
LEVIN FURNITURE¹

Employer

and

Case 6-RC-11890

TEAMSTERS LOCAL UNION #30
a/w INTERNATIONAL BROTHERHOOD
OF TEAMSTERS, AFL-CIO

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, a hearing was held before Julie R. Stern, a hearing officer of the National Labor Relations Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its powers in connection with this case to the undersigned Regional Director.²

Upon the entire record³ in this case, the Regional Director finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

¹ The name of the Employer appears as amended at the hearing.

² Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington by November 16, 2000.

³ The Employer filed a timely brief in this matter which has been duly considered by the undersigned.

3. The labor organization involved claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

The Petitioner seeks to represent a unit, as amended at the hearing, consisting of all full-time and regular part-time warehouse employees and drivers employed by the Employer at its Smithton, Pennsylvania facility; excluding all office clerical employees and guards, professional employees and supervisors as defined in the Act. While the parties are otherwise in agreement as to the scope and composition of the unit, the Employer, contrary to the Petitioner, contends that the clerical employees in the delivery, service, receiving and purchasing departments are plant clerical employees who share a community of interest with the petitioned-for unit and therefore must be included in the unit. There are approximately 96 to 120 employees⁴ in the petitioned-for unit and 20 clericals whose inclusion is urged by the Employer. There is no history of collective bargaining for any of the employees involved herein.

The Employer, a Pennsylvania corporation, with an office and place of business in Smithton, Pennsylvania, is engaged in the business of retail furniture sales. It has retail stores located in Pennsylvania and Ohio, and has a warehouse located in Smithton, Pennsylvania, which services these stores and the stores' retail customers. It is this warehouse which is solely involved in this proceeding.

The Employer's warehouse functions are under the direction of Paula Rojtas, the Director of Operations. At the warehouse, the Employer employs drivers and various classifications of warehouse employees. Specifically, the Employer employs home delivery drivers, over the road drivers, helpers, unpackers, lift handlers, fork lift operators, repair

⁴ In the petition, the proposed bargaining unit is listed as 96. However, the Employer estimates that there are 100 warehouse employees and 20 drivers.

technicians, receivers, loaders, and laborers. At the warehouse, the Employer also employs clericals in the delivery department, the service department, the receiving department and the purchasing department, all of whom are at issue herein.⁵ In addition, at the warehouse, the Employer employs office clerical employees, who are excluded from the unit by stipulation of the parties.

All of the petitioned-for warehouse employees and drivers, as well as the clericals at issue herein, are paid hourly, punch the same time clock, are eligible for overtime and have the same payday. They all receive the same fringe benefit package. None of the petitioned-for or disputed job classifications require any specialized training or experience, and all new employees attend the same new employee orientation program. The Employer does not require the employees to wear uniforms, and there is no dress code in effect; however, the warehouse employees tend to dress more informally than the clerks at issue herein. All employees share the use of common facilities such as the parking area and lunchroom; all participate in the same employee award program; and all may attend the same holiday parties and company picnic. The petitioned-for drivers and warehousemen, as well as the disputed clericals, use the same entrance to the facility, while the undisputed office clericals use another entrance.

The Employer's facility consists of a large warehouse area, with an adjacent office area. While the petitioned-for drivers and warehousemen work in the warehouse area, or on the delivery trucks, the clerical employees at issue herein work in the adjacent office area, as do the office clerical and managerial employees.

In performing their duties, the disputed clericals utilize the Employer's computer system. The Employer also has computer terminals in the warehouse, and warehouse employees involved in moving merchandise have hand-held units. The Employer estimates that about 40 of its warehouse employees are trained to use the computer.

⁵ Each of these departments has its own supervisor.

There is no interchange between the petitioned-for warehouse employees and drivers and the disputed clerical employees, and there has been no transfer between these two groups.

Delivery, Service and Receiving Department Clerks

In the delivery department there are eight clerks. They are responsible for the clerical functions related to the delivery of merchandise. They generate the paperwork used by the drivers and they are responsible for reconciling these documents after delivery. They interact with the drivers by exchanging paperwork with the drivers before the drivers leave the warehouse and again upon the drivers' return. Specifically, in the morning, the clerks lay out paperwork related to deliveries for the drivers. The drivers pick up this paperwork, review it and arrange the deliveries in order. The drivers then return this paperwork to the delivery clerks, who then use it to prepare the final manifests, which are returned to the drivers. This exchange of paperwork between the clerks and the drivers is generally accomplished in a routine manner unless there are questions or problems.

During the day, while drivers are out making deliveries, the delivery clerks and the drivers are in contact by telephone⁶ to resolve questions that arise on matters, such as the wrong address, the customer not at home, the time of a delivery, CODs, and the delivery of wrong merchandise. It was estimated that there are up to 100 such phone contacts between delivery clerks and drivers every day.

The delivery clerks are physically in the warehouse about ten times a week, in connection with last minute customer add-ons to deliveries. In this situation, a delivery clerk would inform a picker⁷ of the need to pick certain items to be loaded as part of a customer's order. Also, one delivery clerk is in the warehouse once a day to file certain paperwork; however, this filing does not require any interaction with the warehouse employees.

⁶ The drivers have cell phones.

⁷ The Employer employs about six pickers.

One of the delivery clerks functions as the receptionist for the customer pick-up area. A customer may come to the warehouse to pick up merchandise rather than have home delivery. The customer pick-up receptionist processes the necessary paperwork, summons a warehouse employee who pulls the merchandise and loads the customer's vehicle. The warehouse employee then returns the completed paperwork to the receptionist. Customer pick-ups occur about 15 times a day.

In the service department, there are six clerks. These clerks perform the paperwork connected with repair functions. They communicate with the repair technicians⁸ regarding information received by the clerks from customers about service orders, regarding parts which are to be shipped to customers and regarding other matters. This type of interaction occurs about 15 to 25 times a week. These clerks also communicate with drivers regarding delivery of damaged items to customers' homes. This type of communication occurs 10 to 30 times a day.⁹

In the receiving department, there are two clerks. These clerks are responsible for the clerical functions associated with the receipt of incoming freight. They make appointments for the incoming freight, pull the purchase orders for the freight, and prepare the labels for the freight. On a daily basis, these clerks interact with the receivers¹⁰ by exchanging paperwork with them and resolving discrepancies. The receiving clerks may physically go into the warehouse in order to resolve discrepancies.

Based on the above and the record as a whole, I find that the clerical employees in the delivery, service and receiving departments perform duties which are directly related to and integrated with the functional operation of the Employer's warehouse. The clerical employees in

⁸ The Employer employs about 12 repair technicians.

⁹ The Employer, in its post-hearing brief, and in a subsequent submission, asserts that the reference in the transcript to these contacts occurring between the drivers and service technicians is in error. The context of the testimony confirms that the witness was describing the contacts between the drivers and the service department clerks.

¹⁰ The Employer employs about six receivers.

these three departments perform tasks which are more closely akin to those performed by plant clerical employees than those performed by office clerical employees. Thus, they have regular contact with the drivers, pickers, repair technicians and receivers in ensuring the accurate receipt, delivery and repair of merchandise; and work in areas which are proximate to the warehouse area. See e.g. Sears, Roebuck and Co., 222 NLRB 476, 477 (1976); Jacob Ash Co., Inc., 224 NLRB 74, 75 (1976).

Purchasing Department Clerks

There are four clerks in the purchasing department. These clerks process the purchase orders generated by the buying department or the sales department. In contrast to the delivery, service and receiving clerks who are administratively placed in departments which include employees in the petitioned-for unit, the purchasing clerks are part of the purchasing department which consists of non-unit employees. Thus, there is no common supervision between the purchasing clerks and any petitioned-for employees.

Further, the purchasing clerks have exceedingly limited interaction with the petitioned-for employees. The purchasing clerks are called upon to interact with receivers to resolve discrepancies between the purchase orders and the freight received. This occurs only about a total of five times a week. These clerks do not interact with any other warehouse employees.¹¹

Based on the above and the record as a whole, I find that the clerical employees in the purchasing department perform duties which are more akin to those performed by office clerical employees excluded by stipulation from the unit. Thus, they have minimal contact with warehouse employees or drivers, with their interactions being limited to dealing with the receivers on a very infrequent basis. Their duties are not so bound up with the warehousing functions as to provide them with a community of interest with the drivers and warehouse

¹¹ Although the Employer, in its post-hearing brief, contends that the purchasing clerks interact directly with the drivers, the cited testimony does not support that assertion. Rather, the testimony indicates that the purchasing clerks interact with the delivery department regarding incorrect merchandise, and does not disclose whether the contacts are with delivery department clerks or directly with the drivers.

employees. See e.g. Wickes Furniture, 255 NLRB 545 (1981); Esco Corporation, 298 NLRB 837, 841 (1990).

Accordingly, I find that the following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time warehouse employees, including delivery department clerical employees, service department clerical employees, receiving department clerical employees, and drivers employed by the Employer at its Smithton, Pennsylvania facility; excluding all purchasing department clerical employees, other office clerical employees and guards, professional employees and supervisors as defined in the Act.

DIRECTION OF ELECTION

An election by secret ballot will be conducted by the undersigned Regional Director among the employees in the unit set forth above at the time and place set forth in the Notice of Election to be issued subsequently, subject to the Board's Rules and Regulations.¹² Eligible to vote are those employees in the unit who were employed during the payroll period immediately preceding the date below, including employees who did not work during that period because they were ill, on vacation or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period and employees engaged in a strike who have been discharged for cause since the

¹² Pursuant to Section 103.20 of the Board's Rules and Regulations, official Notices of Election shall be posted by the Employer in conspicuous places at least 3 full working days prior to 12:01 a.m. of the day of the election. As soon as the election arrangements are finalized, the Employer will be informed when the Notices must be posted in order to comply with the posting requirement. Failure to post the Election Notices as required shall be grounds for setting aside the election whenever proper and timely objections are filed. The Board has interpreted Section 103.20(c) as requiring an employer to notify the Regional Office at least five (5) full working days prior to 12:01 a.m. of the day of the election that it has not received copies of the election notice.

commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced.¹³ Those eligible shall vote whether or not they desire to be represented for collective bargaining by Teamsters Local Union #30 a/w International Brotherhood of Teamsters, AFL-CIO.

Dated at Pittsburgh, Pennsylvania, this 2nd day of November 2000.

/s/Gerald Kobell

Gerald Kobell
Regional Director, Region Six

NATIONAL LABOR RELATIONS BOARD
Room 1501, 1000 Liberty Avenue
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440-1760-2460

¹³ In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. Excelsior Underwear, Inc. 156 NLRB 1236 (1966); NLRB v. Wyman-Gordon Company, 394 U.S. 759 (1969). Accordingly, it is hereby directed that the election eligibility list, containing the full names and addresses of all eligible voters, must be filed by the Employer with the Regional Director within seven (7) days of the date of this Decision and Direction of Election. The Regional Director shall make the list available to all parties to the election. In order to be timely filed, such list must be received in the Regional Office, Room 1501, 1000 Liberty Avenue, Pittsburgh, PA 15222, on or before November 9, 2000. No extension of time to file this list may be granted, except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.